

# SENATE BILL REPORT

## SB 5396

---

---

As of February 11, 2009

**Title:** An act relating to retainage of funds on public works projects.

**Brief Description:** Regarding retainage of funds on public works projects.

**Sponsors:** Senators Rockefeller and Shin; by request of Capital Projects Advisory Review Board.

**Brief History:**

**Committee Activity:** Government Operations & Elections: 2/10/09.

---

### SENATE COMMITTEE ON GOVERNMENT OPERATIONS & ELECTIONS

**Staff:** Aaron Gutierrez (786-7448)

**Background:** For public works projects, public entities must retain up to 5 percent of the contract amount until the completion or acceptance of all contract work. This retainage is held in trust for the payment of anyone who provides labor, materials, supplies, or equipment to the prime contractor. Any unpaid workers, suppliers, or subcontractors may file a lien against the retainage. Any time the amount of work remaining on the contract is less than 5 percent, the contractor can request that the retainage be reduced to 100 percent of the remaining amount.

For public works contracts prior to November 1, 1973, a contractor may terminate all or a portion of the contract due to substantial increase in the cost of petroleum products. Any retainage must be released within 30 days of the decision to terminate the contract.

**Summary of Bill:** References to retainage of funds on public works contracts entered into prior to September 1, 1992, are removed.

Four statutes applying to public works contracts entered into prior to 1992 are repealed: timely payment of interest on unpaid public contracts (RCW 39.76.010); retained percentage for public works (60.28.010); excess over lien claims to contractor (RCW 60.28.020); and duties of disbursing officer upon final acceptance of contract (RCW 60.28.050).

The statute for contracts affected by an increase in the price of petroleum products (RCW 39.04.140) is repealed.

---

*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: A simple housekeeping bill. Public agencies, contractors, and subcontractors frequently attempt to apply provisions of these outdated laws. The petroleum statute is not applicable now. We are in favor of the bill, but would prefer if the petroleum statute was retained and updated.

**Persons Testifying:** PRO: Mike Purdy, University of Washington; Bob Maruska, CPARB; Duke Schaub, Masonry contractors; Van Collins, Associated General Contractors.